

**BEFORE THE MACKENZIE DISTRICT COUNCIL**

**UNDER** The Resource Management Act 1991

**IN THE MATTER OF** Proposed Plan Change 18 to the  
Mackenzie District Plan

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**SUPPLEMENTARY EVIDENCE OF SUSAN CLARE RUSTON**

**FOR**

**MERIDIAN ENERGY LIMITED**

**11 MARCH 2021**

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## INTRODUCTION

1. My full name is Susan Clare Ruston. I have previously provided a Statement of Primary Evidence, Planning, for Meridian Energy Limited (**Meridian**) dated the 12<sup>th</sup> of February 2021 with respect to Proposed Plan Change 18 to the Mackenzie District Plan (**PC18**). Together with Dr Philip Mitchell for Genesis Energy Limited, I have agreed to the 'Joint Witness Statement, Planning, Meridian Energy Limited and Genesis Energy Limited, 26 February 2021' (**JWS**).
2. During the PC18 hearing held on the 8<sup>th</sup> of March 2021 I responded to questions from the Commissioners with respect to my Statement of Primary Evidence and the JWS, and I offered to respond to one of the questions through supplementary evidence. This question related to my recommended changes to Policy 2 in paragraph 65 of my Statement of Primary Evidence (and paragraph 13 of the JWS).
3. In addition to the preceding matter, during the hearing Commissioner Van Voorthuysen asked whether, when making decisions on the activity status of refurbishment activities in PC18, consideration should be given to existing rules in Canterbury Regional Council's regional plans that lead to replacement consents for the Waitaki Power Scheme (**the Scheme**) being a controlled activity. I have reflected on my answer to this question provided during the hearing, and consider that further clarification of my answer may assist the Commissioners. I have also identified a related omission in the recommended amendments to Rule 2.2 in my evidence (and in the JWS).
4. Accordingly, this supplementary evidence addresses each of these matters in turn.

## POLICY 2

5. Commissioner Van Voorthuysen asked whether, in my opinion, Policy 2 should be amended to refer to ensuring not only that indigenous biodiversity is maintained but also that it is enhanced.

6. Policy 2, as amended by the recommendations of the s42A report, addresses *“adverse effects on indigenous vegetation”* where the vegetation is *“located outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna”*.
7. With respect to the question posed, the relevant parts of the higher order documents are set out in Table 1 below.

Section 7(f) of the Resource Management Act 1991	Requires that all persons exercising functions and powers under it <i>“shall have particular regard to...the maintenance and enhancement of the quality of the environment”</i>
Objective 9.2.1 of the Canterbury Regional Policy Statement (CRPS)	<i>“The decline in the quality and quantity of Canterbury’s ecosystems and indigenous biodiversity is halted and their life-supporting capacity and mauri safeguarded.”</i>
Objective 9.2.2 of the CRPS	<i>“Restoration or enhancement of ecosystem functioning and indigenous biodiversity, in appropriate locations, particularly where it can contribute to Canterbury’s distinctive natural character and identity and to the social, cultural, environmental and economic well-being of its people and communities.”</i>
Policy 9.3.4 of the CRPS	<i>“To promote the enhancement and restoration of Canterbury’s ecosystems and indigenous biodiversity, in appropriate locations, where this will improve the functioning and long term sustainability of these ecosystems.”</i>
Policy 9.3.5(3) of the CRPS	<i>“To generally promote the protection, enhancement and restoration of all of Canterbury’s remaining wetlands”</i>

8. Based on the higher order documents, enhancement is not a requirement in all circumstances. Rather particular regard must be given to the enhancement of the environment; and the enhancement and restoration of Canterbury’s ecosystems and indigenous biodiversity, or the promotion of the same, is only required when:

- a) *“it can contribute to Canterbury’s distinctive natural character and identity and to the social, cultural, environmental and economic well-being of its people and communities”;*
  - b) It *“will improve the functioning and long term sustainability of these [Canterbury’s] ecosystems”* and
  - c) Addressing Canterbury’s remaining wetlands.
9. On this basis, I consider that PC18 should promote enhancement of indigenous biodiversity within the circumstances identified above. This could be achieved by amending Policy 2 as follows (where the recommendations of the s42A Report are shown in red and my amendments are shown in blue):

*“Outside of areas of significant indigenous vegetation and significant habitats of indigenous fauna, To*

*a) avoid, remedy or mitigate adverse effects on ~~the natural character and~~ indigenous vegetation, ecological processes, ecosystem functions and linkages between areas of significant indigenous vegetation and significant habitats of indigenous fauna as necessary to ensure that indigenous biodiversity is maintained land and water ecosystems functions in the District including:*

*a) Landform, physical processes and hydrology*

*b) ~~Remaining areas of significant indigenous vegetation and habitat, and linkages between these areas~~*

*c) ~~Aquatic habitat and water quality and quantity.~~ and*

*b) promote the enhancement and restoration of indigenous biodiversity where it will improve the long-term sustainability of ecosystems or contribute to the Mackenzie District’s distinctive natural character and to the well-being of its people and communities.”*

**CONSIDERATION OF REGIONAL RULES MAKING RECONSENTING A CONTROLLED ACTIVITY**

10. Commissioner Van Voorthuysen asked whether, when making decisions on the activity status of refurbishment activities in PC18, consideration should be given to existing rules in Canterbury Regional Council's regional plans that lead to replacement consents for the Waitaki Power Scheme (**the Scheme**) being a controlled activity.
11. Rule 15A of the Waitaki Catchment Water Allocation Regional Plan (**WCWARP**) provides for any take, damming, diverting, storage or use of water that is part of the Scheme, and for which a consent is held and is the subject of an application for a new consent for the same activity, as a controlled activity. Rule 5.123A of the Canterbury Land and Water Regional Plan (**CLWRP**) provides for the discharge of contaminants or water to land associated with an activity that is part of the Scheme and for which a consent is held and is the subject of an application for a new consent for the same activity, as a controlled activity (see Attachment 1 for the details of both rules).
12. It is possible that at the same time as re consenting the activities identified in Rules 15A and 5.123A, some related refurbishment activities may be needed and such refurbishment may result in the clearance of indigenous vegetation.
13. Where more than one activity is involved and those activities are inextricably linked, the general 'rule' is that the activities should be bundled and the most restrictive activity classification applied to the overall proposal. The s42A Report has recommended that *"Any indigenous vegetation clearance associated with the refurbishment of the Waitaki Power Scheme"* be a restricted discretionary activity (Rule 2.2.1). If this recommendation was to be adopted, the implications for the scenario presented in paragraph 12 above is that the resource consent applications would be bundled and the restricted discretionary activity status would be applied to the activities identified in Rules 15A and 5.123A that would otherwise be controlled activities. Such an

outcome would be contrary to the approach adopted in the CLWRP, where the reconstituting of the existing activities, as a controlled activity, can not be declined provided the conditions of Rules 15A and 5.123A are met. In contrast, if the overall proposal becomes a restricted discretionary activity, following bundling, then the applications can potentially be declined.

14. Contrary to the s42A Report’s recommendations, my evidence and the JWS recommend a controlled activity status for refurbishment activities that result in:
  - a) the clearance of indigenous vegetation in areas identified as containing significant indigenous vegetation and/or significant habitats of indigenous fauna, in the existing footprint of the Scheme, core sites associated with the Scheme, and areas covered by an operating easement associated with the Scheme; and
  - b) the clearance of indigenous vegetation beyond the existing footprint of the Scheme, core sites associated with the Scheme, and areas covered by an operating easement associated with the Scheme.
  
15. On this basis, I consider that there is no tension between the controlled activity status for refurbishment activities that is recommended in Table 2 of my evidence (and in the table provided at paragraph 17 of the JWS) and the controlled activity status established in Rules 15A of the WCWARP and 5.123A of the CLWRP.
  
16. My rationale for recommending the controlled activity status for the refurbishment activities in the second and third rows of Table 2 principally stems from the need to give effect to the NPSREG, in particular the requirement to recognise and provide for *“maintaining or increasing electricity generation while avoiding, reducing or displacing greenhouse gas emissions”*. Further components of my rationale are set out in paragraphs 91 to 95 of my evidence (dated the 12th of February 2021).

17. In preparing this supplementary evidence, it has come to my attention that one of the activities in Table 2 of my evidence (and in the table at paragraph 17 of the JWS) has been omitted from the amended rules that are recommended in paragraph 97 of my evidence (and in paragraph 18 of the JWS). The omitted activity is the clearance of indigenous vegetation beyond the existing footprint of the Scheme, core sites associated with the Scheme, and areas covered by an operating easement associated with the Scheme. This activity is recommended to be a controlled activity.
18. The following provides an updated complete set of recommended rules for Section 2 Indigenous Vegetation Clearance Associated with the Waitaki Power Scheme (where the recommendations of the s42A Report are shown in red and the amendments I have recommended are shown in blue). The amendment to address the preceding omission is made to Rule 2.2.

**Rules 2.1.1 and 2.1.2 are combined to read as follows:**

*"The clearance of indigenous vegetation associated with the Waitaki Power Scheme is a permitted activity where one or more of the following conditions are met*

*2.1.1. The clearance is a consequence of an emergency occurring on, or failure of, the Waitaki Power Scheme;* *or*

*2. The clearance is required for the operation and maintenance of the Waitaki Power Scheme, within one or more of the following areas;*

- *The existing footprint of the Waitaki Power Scheme;*
- *On Core sites associated with the Waitaki Power Scheme;*
- *On Areas covered by an operating easement associated with the Waitaki Power Scheme;* *or*

3. The clearance is required for the refurbishment of the Waitaki Power Scheme, and is outside of an identified area of significant indigenous vegetation and significant habitats of indigenous fauna and, is within one or more of the following areas:

- The existing footprint of the Waitaki Power Scheme;
- Core sites associated with the Waitaki Power Scheme;
- Areas covered by an operating easement associated with the Waitaki Power Scheme; or

~~34.~~ The clearance meets the conditions in Rule 1.1.1”

**Rule 2.2 (both the PC18 version and the s42A Report’s recommended version) is deleted in its entirety and replaced as follows:**

“The clearance of indigenous vegetation where it is required for the refurbishment of the Waitaki Power Scheme and is not otherwise provided for as a permitted activity by Rule 2.1 is a controlled activity.

The Mackenzie District Council reserves control over the following matters:

- a) Methods to avoid, remedy or mitigate potential adverse effects on areas identified as containing indigenous vegetation and significant habitats of indigenous fauna; and
- b) Methods for offsetting or environmental compensation where the potential adverse environmental effects on areas identified as containing significant indigenous vegetation and significant habitats of indigenous fauna cannot be fully avoided, remedied or mitigated, and residual environmental effects remain.”



**Rule 2.3**

The clearance of aAny indigenous vegetation ~~clearance~~ associated with ~~any new facility, structure or works associated with~~ the Waitaki Power Scheme ~~that is not permitted~~ provided for as a permitted activity under Rule 2.1.1, or as a controlled activity under Rule 2.2, is a discretionary activity.



Susan Ruston

11<sup>th</sup> of March 2021

**ATTACHMENT 1: RELEVANT RULES OR CLWRP AND WCWARP**

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Rule 15A of the WCWARP reads as follows:

*“Any activity that is part of the Waitaki Power Scheme, for which a consent is held and is the subject of an application for a new consent for the same activity and is:*

- (a) the use of water for the generation of electricity; or*
  - (b) the taking, damming or diverting of water for storage; or*
  - (c) the taking or diverting of water into canals; or*
  - (d) the taking, damming, or diverting of water to protect the structural integrity of dams, power houses, canals and appurtenant structures;*
- is a controlled activity, provided the activity complies with Rules 2, 3, 6 and 7.”*

Rule 5.123A of the CLWRP reads as follows:

*“Despite other discharge rules in this Plan, the discharge of contaminants or water onto or into land in circumstances where contaminants may enter surface water, or into surface water, associated with an activity that is part of the Waitaki Power Scheme, for which a resource consent is held and is the replacement of authorisation for a lawfully established existing discharge affected by the provisions of sections 124 - 124C of the RMA, and the discharge is*

- (a) generation and spill water from dams and power houses; or*
- (b) from water storage; or*
- (c) into or from canals; or*
- (d) to protect the structural integrity of dams, power houses, canals and appurtenant structures;*

*is a controlled activity, provided the following condition is met:*

1. *The discharge does not cause the relevant water quality limits set out in Section 15B of this Plan, or in the absence of any water quality limits in Sections 15B the limits set out in Schedule 8 of this Plan, to be exceeded.”*